

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4040 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : YES

UNION OF INDIA

Versus

MANUBHAI PARMAR DIVL SECRETARY

Appearance:

MR RJ OZA for Petitioners
NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 03/12/1998

ORAL JUDGEMENT

#. This petition is filed by the Union of India against the order dated 16th march, 1998 passed by the Central Administrative Tribunal, Ahmedabad Bench ('CAT' for short) in O.A. No.28 of 1998.

#. The opponents No. 1 & 2 were original applicants.

They were serving as Postmen in Ahmedabad General Post Office. On January 8, 1996, a decision was taken by the Postal Department to change three delivery system into two delivery system. The said decision was challenged by the applicants by filing O.A.No.905 of 1996. The application came to be dismissed by CAT inter alia observing that if the Union was aggrieved by the decision, it could approach the Head of the department for redressal. It was also observed that if such representation would fail, the Union could invoke industrial law. It appears that the postal department did not change the decision. Notice of strike was, therefore, given by the union to the Chief Post Master General on 15th December, 1997 raising demand against change of shift by Postal Department. On 12th January, 1998, the Regional Labour Commissioner addressed a letter to the Chief Post Master General inviting his attention to the provisions of Section 33 of the Industrial Disputes Act, 1947 and advising him to adhere to those provisions. On 15th January, 1998, the applicants filed O.A.No.28 of 1998 inter alia praying therein that the change in the delivery system sought to be effected by the department was contrary to the provisions of the Industrial Disputes Act, 1947 and therefore, the same was illegal and ultra vires. On the same day, notice was issued by making it returnable on 28th January, 1998 and ex parte ad interim injunction was granted by the Tribunal directing the department to restore the position as prevailed on 15th December, 1997. On 28th January, 1998, the Department appeared and contested the claim of the Union by filing a written reply. On 16th March, 1998, the tribunal disposed of finally the original application. In para-6, however, the tribunal stated thus;

" It is clear from the submissions that the main issue pertains to the factual question as to whether the hours of work have been increased which would adversely affect conditions of service and if that were the position, the same cannot be done except with the permission of the conciliation officer. As there is dispute on this factual question and as it is now brought out that the Conciliation Officer himself has sought for some details, we direct the Department to furnish the necessary details before the Conciliation Officer so that he can come to an appropriate finding keeping in view the provisions of Section 33 and 33A. We further direct the department shall furnish the materials to the Conciliation Officer within a fortnight

from today. We hope that keeping in view the ramifications of the case, the Conciliation Officer will come to an appropriate finding as expeditiously as possible. Till he comes to a finding, the status quo as on 15.12.1997 shall be maintained by the respondents. We make it clear that we have not gone into the merits of the contentions raised by both sides as the same will be done by the Conciliation Officer.

With the above directions, the OA is finally disposed of. No costs." [Emphasis supplied]

#. Several contentions were raised by Mr.Oza, learned counsel for the petitioner. He stated that the application was finally disposed of on 16th March, 1998 by CAT without entering into merits of the matter and ad interim relief of status quo as on 15th December, 1997 was ordered to be continued. He submitted that as CAT did not decide the legality or otherwise of the order passed by the department and left the parties to get those questions determined in appropriate proceedings, it was not open to the Tribunal to continue ad interim relief by extending an opportunity to the applicants to approach appropriate forum. The order passed by CAT, therefore, is contrary to law and in excess of jurisdiction and the same requires to be quashed and set aside.

#. For the above proposition of law, our attention was invited by the counsel to a decision of the Hon'ble Supreme Court in STATE OF ORRISA VS. MADAN GOPAL RUNGTA, AIR 1952 SC 12. In that case, a petition was filed in the High Court under Article 226 of the Constitution of India against the State for cancelation of mining lease by the Government and for permanent injunction restraining the Government from interfering with the possession of the petitioners. Considering the facts and circumstances of the case, the High Court directed the petitioner to approach a Civil Court by filing a suit as the questions sought to be agitated in the petition were disputed questions of fact which could not be appropriately dealt with and decided in exercise of extraordinary jurisdiction of the Court under Article 226 of the Constitution. In view of the fact, however, that a statutory notice under Section 80 of the Code of Civil Procedure, 1908 was required to be issued before filing a suit, interim relief restraining the Government from

disturbing the possession of the petitioners for a period of three months was granted so as to enable them to obtain appropriate relief from the Civil Court. The said order was challenged by the State by approaching the Supreme Court.

#. Allowing the appeal and setting aside the order passed by the High Court, the Hon'ble Apex Court observed;

This is not a case where the Court before finally disposing of a petition under Article 226 gave directions in the nature of interim relief for the purpose of maintaining status quo. The question which we have to determine is whether direction in the nature of interim relief only could be granted under Article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued. In our opinion Art. 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of S.80, Civil P.C. and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If the Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the

Constitution. In our opinion, the language of Article 226 does not permit such an action."
[Emphasis supplied]

#. Mr.Oza submitted that the decision in MADAN GOPAL RUNGTA applies with equal force to the facts of the present case. In the case on hand also, the tribunal did not decide the matter on merits. It left the parties to obtain appropriate order from appropriate forum. It was thereafter not within the jurisdiction of CAT to continue interim relief so that in the meanwhile the applicants can approach an appropriate forum and can get appropriate relief. The order of CAT is, therefore without jurisdiction and liable to be set aside.

#. Mr.Pathak, on the other hand submitted that the petition has become infructuous and this Court may not express any opinion on the larger question sought to be agitated by Mr.Oza. He submitted that failure report was submitted by the Conciliation Officer, and as on today, the proceedings are pending before the Industrial Tribunal, and interim relief is also granted. The order passed by CAT has thus outlived its utility and taking into account the subsequent development, this Court may not answer the point raised by the petitioner.

#. In reply to the above submission, Mr.Oza urged that in several such matters, CAT has passed similar orders and even at present, that practice is continued by the Tribunal. Hence, this is eminently a fit case to decide as to whether the Tribunal has jurisdiction to pass such orders.

#. In our opinion, in the facts and circumstances of the case, when the period for which, interim relief was continued is over, and now the competent court (Industrial Tribunal) is seized of the matter, it is not necessary for us to interfere with the order passed by CAT. We are, however, constrained to observe that it is indeed doubtful whether such order could have been passed by CAT. In our judgment, it is well settled principle of law that interim relief can only be granted in the aid of and as an ancillary to the principal and main relief which may be granted by the Court / Tribunal at the time of final disposal of the proceeding. Therefore, where a Court / Tribunal refuses to entertain a proceeding either because it is not maintainable at law or on any other ground whatsoever and leaves the parties to approach an appropriate forum without considering and deciding the lis, it cannot grant or continue interim relief till such

parties obtain appropriate relief from appropriate forum.

##. In the instant case, it is an admitted position that CAT has finally disposed of the petition observing that the department would furnish necessary details to the Conciliation Officer so that he can record an appropriate finding keeping in view the provisions of Sections 33 and 33 A of the Industrial Disputes Act, 1947. The CAT, therefore, did not enter into the contentions raised by the parties and left them to get those questions decided in appropriate forum. In our considered view, thereafter it was not open to the tribunal to continue ad interim relief which was in the nature of status quo ante which was granted initially on 15th January, 1998. To recall, on 15th January, 1998, OA was filed by the applicants and notice was issued by CAT and ex parte ad interim mandatory injunction was granted directing the Department to restore the position as of 15th December, 1997. The said relief could not have been continued when the tribunal finally disposed of the petition by not deciding the matter on merits and leaving the parties to get appropriate order from appropriate forum.

##. For the foregoing reasons, in our opinion, CAT ought not to have passed the above order impugned in the present petition. In view of the fact, however, that the period for which the relief was granted is over and appropriate Court i.e. Industrial Tribunal has granted interim relief, no further direction is necessary.

##. In the result, the petition deserves to be disposed of and is accordingly disposed of. Ad interim relief stands vacated. No order as to costs.

(C.K.Thakkar,J.)

Date : 3-12-1998 (A. L.Dave,J.)
(KPP)